



October 30, 2020

**BY ECF AND EMAIL**

Honorable Victor Marrero  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

**Orrick, Herrington & Sutcliffe LLP**  
51 West 52nd Street  
New York, NY 10019-6142  
  
+1 212 506 5000  
**orrick.com**

**Aaron J. Gold**

**E** aaron.gold@orrick.com  
**D** +1 212 506 5179  
**F** +1 212 506 5151

Re: National Coalition on Black Civic Participation v. Wohl, Case No. 20-cv-8668

Dear Judge Marrero:

We write on behalf of Plaintiffs in the above-referenced action to request that the Court take judicial notice of the following facts that became part of the public record during the preliminary examination in Defendants' criminal case in the State of Michigan. *See* Fed. R. Evid. 201.

*First*, that on October 29, 2020, the State of Michigan 36th District Court held a preliminary examination hearing during which: (a) the court granted the Michigan Department of Attorney General's request—*over Defendants' objections*—for a bail modification permitting Defendants to comply with this Court's directive to issue a curative robocall; and (b) the Michigan court found there to be probable cause to believe that Defendants committed the acts alleged. The Michigan Attorney General's request for bail modification is attached hereto as Exhibit A, and a video recording of that hearing is available at [https://www.youtube.com/watch?v=9S9Y\\_1cVb8g&ab\\_channel=CTRM43836thDistrictCourt](https://www.youtube.com/watch?v=9S9Y_1cVb8g&ab_channel=CTRM43836thDistrictCourt), at approximately 2 hours and 19 minutes.

*Second*, the exhibits introduced by the Michigan Attorney General during the preliminary examination hearing, portions of which are attached hereto as Exhibits B–F. These exhibits contradict various statements Defendants made both during the October 26, 2020 hearing this Court held on Plaintiffs' application for a temporary restraining order and in Defendants' subsequent filings. For instance:

- Mr. Wohl stated at the hearing that their “call was not targeted to black individuals – there’s no way to do that, to my knowledge,” Tr. 18:19–20, but in an August 25, 2020 email, Mr. Wohl writes to Mr. Burkman: “Attached is the audio file for the robo call. We should send it to black neighborhoods in Milwaukee, Detroit, Philadelphia, Charlotte, Richmond, Atlanta and Cleveland.” Ex. B. Further, Mr. Burkman writes in an August 26, 2020 email

Hon. Victor Marrero

October 30, 2020

Page 2

to Mr. Wohl that “[I] love these robo calls[.] [G]etting angry black call backs[.] [W]in or lose the black robo was a great jw idea.” Ex. C.

- Mr. Wohl also stated at the hearing that the contested robocall was “a public service announcement, and every claim made in the call is dispositively [sic] true.” Tr. at 18:21–23. Defendants’ Motion for Reconsideration states the same. *See* ECF No. 40 at 4 (stating “[t]he Project 1599 group call” was “an advisory, which . . . is neither false nor misleading nor inaccurate”). However, on August 19, 2020, Mr. Wohl wrote to Mr. Burkman declaring that “[w]e must HIJACK this boring election.” Ex. D. Also on August 19, 2020, Mr. Burkman, copying Mr. Wohl, wrote to Robert Mahanian of Message Communications, Inc. about robocall payment stating “[c]heck to you Robert just went out in the 2 day pouch you will have in 2–3 days *then we attack*.” Ex. E (emphasis added). These statements by Defendants belie their claim that the statements in the robocall were true and that they therefore sent the call as a public service announcement.

Respectfully,

/s/ Aaron J. Gold

Aaron J. Gold

cc: David Schwartz, Esq. (by ECF and email)  
Randy Kleinman, Esq. (by ECF and email)

# EXHIBIT A

STATE OF MICHIGAN  
IN THE 36<sup>TH</sup> DISTRICT COURT

People of the State of Michigan,

vs.

Case No. 20060910 (Wohl)  
20060911 (Burkman)

Jacob Alexander Wohl; and  
John Maculey Burkman

HON. KENNETH KING  
District Court Judge

Defendants

-----/

**EMERGENCY MOTION TO MODIFY BAIL CONDITIONS**

NOW COME the People of the State of Michigan, by and through Richard L. Cunningham, P29735, Assistant Attorney General, and here move this Honorable Court to modify the conditions of pre-trial release concerning these defendants, saying:

1. Defendants Jacob Alexander Wohl and John Maculey Burkman have been charged in a four count complaint and warrant with (1) Bribing/Intimidating Voters; (2) Conspiracy to Commit Bribing/Intimidating Voters; (3) Use of a Computer to Commit Bribing/Intimidating Voters; and (4) Use of a Computer to Commit Conspiracy to Commit Bribing/Intimidating Voters.

2. These charges arise from a robocall alleged to have been made to numerous Detroit residents on August 26, 2020.

3. At the time of the arraignment on the complaint and warrant, the magistrate released the defendants on bond. One of the conditions of the pre-trial release is that they not send out, or cause to be sent out, any robo-calls.

4. A preliminary examination on these charges has been scheduled before this honorable court on Thursday, October 29, 2020.

5. Under MCR 6.106(H)(2)(a) this court has the authority to modify a prior release decision when it finds a substantial reason for doing so.

6. Following the initiation of these criminal charges in Michigan, The National Coalition On Black Civic Participation and other plaintiffs initiates a civil action in the U.S. District Court for the Southern District of New York. That matter remains pending as Case No. 20 Civ. 8668 (VM). That action involves the same August 26, 2020 robocall that is at the heart of the Michigan criminal case.

7. Plaintiffs in this civil action requested a Temporary Restraining Order (TRO), seeking to stop the defendants from making any further robocalls until after the 2020 General Election.

8. On October 28, 2020, the Hon Victor Marrero, United States District Judge, issued a decision and order on this request for a TRO. A copy of that opinion is appended to this motion.

9. In this Decision and Order the court ruled, inter alia, that the defendants are required to send out a “curative” robocall to everyone who received the August 26, 2020 robocall concerning mail-in voting.

10. The order by the federal judge may be seen to conflict with the Michigan pre-trial release decision. However, the federal court concluded in footnote 33, at page 64, that he did not believe the Michigan bond conditions was intend to prohibit the type of remedial messaging he ordered. And he further concluded that the

Supremacy Clause required that his order take precedence over the State pre-trial release decision.

WHEREFORE, the People here move this honorable court to modify the defendants' pre-trial release order to make it clear that the remedial robocalls ordered by the federal court do not violate the conditions of pretrial release.

Dated: October 28, 2020

Respectfully submitted:

A handwritten signature in blue ink, appearing to read 'R. Cunningham', is positioned above the printed name and title.

Richard L. Cunningham, P29735  
Assistant Attorney General  
2020 W Grand Blvd. #10-352  
Detroit, MI 48202  
(313) 456-0204

# EXHIBIT B

**Subject:** Robo Call Tape

**Date:** 25/08/2020 00:10 **From:** "jacobwohl@gmail.com" <jacobwohl@gmail.com> **To:** "Jack Burkman" <jackburkman2016@gmail.com>

---

Attached is the audio file for the robo call. We should send it to black neighborhoods in Milwaukee, Detroit, Philadelphia, Charlotte, Richmond, Atlanta and Cleveland.



# EXHIBIT C

**Subject:** Re: Protest

**Date:** 26/08/2020 12:36 **From:** Jack Burkman <jackburkman2016@gmail.com> **To:** "jacobwohl@gmail.com" <jacobwohl@gmail.com>

lets leave thursday 630 pm with luis thursday

i love these robo calls getting angry black call backs

win or lose the black robo was a great jw idea

On Wed, Aug 26, 2020 at 11:38 AM [jacobwohl@gmail.com](mailto:jacobwohl@gmail.com) <[jacobwohl@gmail.com](mailto:jacobwohl@gmail.com)> wrote:  
They say they're starting at 7:00 PM

On 8/26/2020 11:37:20 AM Jack Burkman <[jackburkman2016@gmail.com](mailto:jackburkman2016@gmail.com)> wrote

wonderful what time thursday

On Wed, Aug 26, 2020 at 11:32 AM [jacobwohl@gmail.com](mailto:jacobwohl@gmail.com) <[jacobwohl@gmail.com](mailto:jacobwohl@gmail.com)> wrote:  
The rioters are starting their mayhem tomorrow at 7:00 PM Black Lives Matter Plaza (formerly known as Lafayette Square).

We should definitely get Louis and Bull Horns.

# EXHIBIT D

---

**Subject:** Re: Dem

**Date:** 19/08/2020 11:49 **From:** Jack Burkman <jackburkman2016@gmail.com> **To:** J W <jacobwohl@gmail.com>

---

yes america needs w b

On Wed, Aug 19, 2020 at 11:40 AM J W <[jacobwohl@gmail.com](mailto:jacobwohl@gmail.com)> wrote:

Bill Clinton Dem Convention speech viewership online stream total viewership

ABC - 727

CBS - 424

NBC - 196

NO-I'M NOT MISSING ANY ZEROES.

Our press conferences literally get 50-100x more views

which is why we must HIJACK this boring election

# EXHIBIT E

**From:** [Jack Burkman](#)  
**To:** [robert@messagecommunications.com](mailto:robert@messagecommunications.com)  
**Cc:** [Jacob Wohl](#)  
**Subject:** Re: Robert  
**Date:** Wednesday, August 19, 2020 9:17:08 PM

---

Check to you Robert just went out in the 2 day pouch you will have in 2- 3 days

then we attack

On Wed, Aug 19, 2020 at 8:55 PM Robert Mahanian <[Robert@messagecommunications.com](mailto:Robert@messagecommunications.com)> wrote:

Hey Jack,

Glad things are going well for you guys! Please mail the check to the below address and make sure to include the account you wish to credit on the notes section of the check. I'll credit your account as soon as I get it. Thank you, ~Robert

Physical Mailing Address:

Message Communications, Inc.

C/O Robert Mahanian

505 N Tigertail Road, Second Floor

Los Angeles, CA 90049-2310

Robert Mahanian, MBA  
Message Communications, Inc.  
E-Mail: [Robert@MessageCommunications.com](mailto:Robert@MessageCommunications.com)  
Toll-Free Phone : (800) 848-8621 x 350  
Toll-Free Fax : (800) 848-8892  
Web : [www.MessageCommunications.com](http://www.MessageCommunications.com)

**From:** Jack Burkman [mailto:[jackburkman2016@gmail.com](mailto:jackburkman2016@gmail.com)]  
**Sent:** Wednesday, August 19, 2020 5:50 PM  
**To:** [jacobwohl@gmail.com](mailto:jacobwohl@gmail.com); [Robert@messagecommunications.com](mailto:Robert@messagecommunications.com)

# EXHIBIT F

**Subject:** working on robo now

**Date:** 25/08/2020 17:51 **From:** Jack Burkman <jackburkman2016@gmail.com> **To:** Jacob Wohl <jacobwohl@gmail.com>

---

cleveland phila minn chicago nyc detroit